

Appl. No. 10/735,950  
Response dated November 03, 2006  
Reply to Office Action of 05/03/2006

### **REMARKS/ARGUMENTS**

Applicants respectfully request reconsideration of this application in view of the following remarks.

### **Response to Rejection of Claims 24, 25, 28, and 29 Rejection under 35 U.S.C. § 112**

The Office rejected claims 24, 25, 28 and 29 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Wherein the Office stated:

"These claims relate to a vehicle model and are inherently unclear. The transmission and vehicle structure is all that is relevant in a patent claim not the name of the particular vehicle that includes a transmission."

(Office Action, page 3-4).

Applicant's claims 24, 25, 28, and 29 recite:

24. (original) The apparatus of claim 18, wherein the ATV transmission is a transmission used in an Artic Cat 250 or an Artic Cat 300 ATV.

25. (original) The apparatus of claim 18, wherein the ATV transmission is a transmission used in a Suzuki LT-F4WDX or a Suzuki LT-F4WD ATV.

28. (original) The apparatus of claim 26, wherein the ATV transmission is a transmission used in an Artic Cat 250 or an Artic Cat 300 ATV.

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29. (original) The apparatus of claim 26, wherein the ATV transmission is a transmission used in a Suzuki LT-F4WDX or a Suzuki LT-F4WD ATV.

Applicants submit that the transmission(s) used in conjunction with the ATV's cited in Applicant's claims 24 – 29 and Specification are readily identifiable in the commercial literature. Therefore the claims are not rendered indefinite.

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**Response to Rejection of Claims 18, 19, and 24-29 Rejection under 35 U.S.C. § 103(a)**

**- Pestotnik in view of Grayson**

The Office has rejected claims 18, 19 and 24-29 under 35 U.S.C. 103(a) as being unpatentable over Pestotnik (Pestotnik), USPN 6,182,784 in view of Grayson (Grayson), USPN 5,247,845.

Applicant respectfully points out that according to the MPEP §2142, "to establish a *prima facie* case of obviousness, three basic criteria must be met:

- 1<sup>st</sup> there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings;
- 2<sup>nd</sup> there must be a reasonable expectation of success;
- 3<sup>rd</sup> the prior art reference (or references when combined) must teach or suggest all of the claim limitations."

These criteria have not been met by the Office's rejection of Applicant's claims 18, 19, and 24-29.

The Office states:

"Claims 18, 19 and 24-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pestotnik (USPN 6,182,784) (provided in Applicant's IDS) in view of Grayson (USPN 5,247,845).

Pestotnik discloses an ATV having a transmission, the transmission having a shaft and a housing and further having a power takeoff shaft (56a) that transfers energy to an external device. Pestotnik discloses a sub-transmission (see col. 6, lines 51-67) that includes a normal, low and "super" low speed/gear position. Furthermore, it is stated that the device is placed in a neutral position.

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However, Pestotnik does not disclose the transmission shaft having a releasably connectable shaft extension that is coupled to the transmission shaft an "accessible" through an opening in the transmission housing.

Grayson discloses a power takeoff arrangement having a **transmission shaft (12)** (emphasis added) and an opening through which a **transmission shaft extension (30)** (emphasis added) is releasable coupled thereto. Providing a shaft member that transitions to a driven device is a well-known feature in transmission devices.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the arrangement of Pestotnik by provided a transmission shaft extension/adapted that is releasably connectable to the transmission shaft through an opening in the transmission housing as taught by Grayson so as to provide an "adaptability" feature to the PTO arrangement improve it's versatility." (Office Action, pages 4-5.)

Pestotnik does not teach an all-terrain vehicle (ATV) transmission or sub-transmission coupled to the ATV's engine "without" using belts. Pestotnik is directed to "a belt-type continuously variable transmission (CVT)." A rubber belt 54 delivers power from the driving pullet assembly 42 to the driven pulley assembly 46. Thus, any power delivered to the power take-off shaft 56a must be conveyed through the Pestotnik's pulley/assemblies; thereby providing a limitation on the power that can be delivered by the power take-off unit. Such a belt drive power take-off is not capable of providing the torque that Applicant's invention can deliver. Therefore, Pestotnik cannot generate the high pressure needed to run Applicant's hydraulic pump, as described in Applicant's Specification:

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"In one embodiment the hydraulic pump powered by the power takeoff generates 3,000 pounds per square inch of pressure with a volume flow of 9.8 gallons per minute."

(Applicant's Specification, ¶ 58.)

It is also known in the art that belt type CVT transmissions are susceptible to changes in friction due to water infiltration, mud, etc. when conveying an ATV to a field location as described by Pestotnik. Such problems associated with CVT transmissions teach away from using an ATV equipped with a CVT transmission.

Pestotnik talks about a "neutral" position at line 63-66, column 6; but does not explain how the CVT transmission manages to deliver power to the power takeoff without delivering power to the wheels at the same time. There is no explanation of how neutral is achieved. Note that Pestotnik specifically states at lines 56-60, column 8:

"In each case, the CVT 44 acts as a centrifugal clutch so that application of throttle above idle speed for the engine 32 causes the driving of power to the wheels 28 and 30 to propel the vehicle 10."

In such a situation "neutral" is achieved by the CVT transmission itself by depriving the transmission of power, a power take-off unit would not function when the ATV was stationary.

The Office cites Grayson for the proposition that Grayson teaches "a transmission shaft extension," however Grayson deals specifically with a "crankshaft extension." Grayson does not discuss "transmission" shafts at all in the entire document.

Respectfully, the Office uses hindsight reasoning to combine Pestotnik and Grayson and claim that Applicant's invention results. To the contrary, Applicant teaches a power take-off that can be used to develop a high pressure hydraulic flow that can be used to power earth

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boring drills capable of drilling deep into the earth. Pestotnik's belt driven CVT cannot develop the torque needed to develop 3000 pounds per square inch of pressure needed to perform such a drilling function.

The combination of Pestotnik and Grayson do not teach or suggest all of Applicant's claim limitations. There is no expectation of success in achieving all of Applicant's claim limitations by making the combination. There is no suggestion in the art to combine the references as the Office has done.

**Response to Rejection of Claim 20 Rejection under 35 U.S.C. § 103(a) – Pestotnik in view of Grayson further in view of Laflamme**

The Office has rejected claims 20 under 35 U.S.C. 103(a) as being unpatentable over Pestotnik in view of Grayson as applied to claims 18, 19, and 24-29 above, and further in view of Laflamme (Laflamme) (USPN 6,672,414).

The criteria required to maintain a *prima facie* case of obviousness have not been met by the Office's rejection of Applicant's claims 20.

The Office states:

"Pestotnik in view of Grayson does not disclose a PTO including a hydraulic pump.

Laflamme discloses an ATV having a PTO incorporating a hydraulic pump.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Pestotnik in view of Grayson by providing a PTO unit including a hydraulic pump as taught by Laflamme as a hydraulic pump is a versatile and useful means of powering an external device."



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(Office Action, pages 5-6.)

Applicant submits that the Office has not made out the required *prima facie* case of obviousness needed to reject claim 19, from which claim 20 depends; therefore, the rejection of claim 20 is not proper. Applicant notes that Laflamme is directed to a "kit" for installing a hydraulic pump on an ATV without modification of the ATV:

"Another aspect of the invention is to provide a hydraulic pump unit that can be retrofitted to an existing ATV without requiring modification of the ATV or additional engine parts or fittings. For example, the hydraulic pump unit can be mounted on the engine in replacement of an auxiliary starter that would normally be mounted on the engine."

Laflamme, lines 29-34, column 2.)

Thus removal of an auxiliary starter is required in order to mount Laflamme's hydraulic pump onto an ATV; such limitations are not required with Applicant's invention.

**Response to Rejection of Claims 21-23 Rejection under 35 U.S.C. § 103(a) – Pestotnik in view of Grayson further in view of Yokoyama**

The Office states:

"Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pestotnik in view of Grayson as applied to claims 18,19 and 24-29 above, and further in view of Yokoyama (USPN 5,144,852).

Pestotnik in view of Grayson do not specifically disclose a subtransmission plate providing a neutral position as claimed. Although Pestotnik discloses a sub-transmission and a plurality of shift positions (col. 6, lines 51-67), Examiner is not relying on this detail to be a transmission plate containing a position.

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Yokoyama (Fig. 1) discloses a shift plate having a plurality of positions. The relevance is merely in providing a shift plate having position.

With respect to claims 22 and 23, the dependency of these claims from 21 does not require that a transmission shift plate be required to have a plurality of neutral positions and furthermore it is proper to use the terms "high", "low" or "super low" positions to describe any gear position as these detail likewise are not claimed so as to be included in one arrangement. Therefore, it is proper to refer to a single gear position as high or low in one interpretation and low or super low in another.

It would have been obvious to one of ordinary skill in the art to use a shift plate arrangement as taught by Yokoyama in the sub-transmission gear selection arrangement as disclosed by Pestotnik so as to provide a position engagement and indication of the proper and desired gear position while provided a neutral position between two gear positions that may be called a high and low, or a low and super low, which is consistent with the gear positions disclosed by Pestotnik."

(Office Action, pages 6-7.)

The criteria required to maintain a *prima facie* case of obviousness have not been met by the Office's rejection of Applicant's claims 21-23. Specifically, Applicant submits that the Office has not made out the required *prima facie* case of obviousness needed to reject claim 18, from which claims 21-23 depend; therefore, the rejection of claims 21-23 is not proper.

Additionally, the Office has not made out the required *prima facie* case of obviousness needed to reject claims 21-23. Simply pointing to Figure 1 in Yokoyama and stating it that it would have been "obvious...." Ignores the fact that the manufacturer of the transmissions used in the Suzuki LT-F4WDX or Suzuki LT-F4WD ATVs did not provide such a neutral position on the shift plate 302 (Applicant Specification, Figure 3). Yokoyama



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does not teach the elements found in claims 21-23. Applicant discovered the neutral positions as taught within the Specification and as claimed. There is nothing found within Yokoyama to teach Applicant's invention as claimed.

### CONCLUSION

The combination of Pestotnik, Grayson, Laflamme, and Yokoyama do not teach or suggest all of Applicant's claim limitations. There is no expectation of success in achieving all of Applicant's claim limitations by making the combination or combinations. There is no suggestion in the art to combine the references as the Office has done.

Applicants submit that the rejection of dependent claims not specifically addressed, are addressed by Applicants' arguments to the claim(s) on which they depend.

Applicants respectfully submit that all claims are in condition for allowance and request such.

Communication via cleartext email is authorized.

Respectfully submitted,  
PELOQUIN, PLLC

11/03/2006

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Date

Mark S. Peloquin, Esq.  
Mark S. Peloquin, Esq.  
USPTO Registration # 50,787

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Mark S. Peloquin, Esq.  
(Typed or printed name of person transmitting paper or fee)

Mark S. Peloquin, Esq. November 3, 2006  
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